

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

STEPHEN WYNN,)
v. Plaintiff,)
BNSF RAILWAY COMPANY,) Case No. 22-cv-00779-FJG
Defendant.)

ORDER

Pending before the Court is Defendant's Motion to Dismiss (Doc. 5) and a joint Stipulation of Dismissal (Doc. 14).

The present matter was filed in the Circuit Court of Cass County, Missouri on August 18, 2022, and was timely removed to this court by defendant, under § 28 U.S.C. 1331. Plaintiff alleged a claim for negligence under 45 U.S.C. § 51-60, the Federal Employers' Liability Act ("FELA"), and a claim for retaliation under 49 U.S.C. § 20109, the Federal Railroad Safety Act ("FRSA"). Plaintiff's claim for negligence under FELA is nonremovable under 28 U.S.A § 1445(a), which states that a civil action brought in state court against a railroad with a claim arising under 45 U.S.C. § 51-60 may not be removed to a district court. However, plaintiff's case was removable pursuant to 28 U.S.C. § 1441(c), which states an entire case may be removed if a civil action includes a claim made nonremovable by statute, but the district court shall then sever the claim that is nonremovable by statute and remand it to state court. 28 U.S.C. § 1441(c)(2). Because of the Stipulation of Dismissal of Count II, Plaintiff's claim pursuant to FELA, 45 U.S.C. § 51, is the only count remaining.

Pursuant to the Stipulation of Dismissal (Doc. 14), Count II of Plaintiff's First Amended Petition under 49 U.S.C. § 20109 is **DISMISSED WITHOUT PREJUDICE**. Defendant's Motion to Dismiss Count II (Doc. 5) is **DENIED** as **MOOT**. The case is thus remanded to the Circuit Court of Cass County, Missouri.

IT IS SO ORDERED.

Dated: January 10, 2023
Kansas City, Missouri

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/s/ Fernando J. Gaitan, Jr.

Fernando J. Gaitan, Jr.

United States District Judge